

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

CARL NEAL, #185182,

Petitioner,

Civil No: 2:08-13935
Honorable Victoria A. Roberts
Magistrate Judge R. Steven Whalen

v.

WILLIE O. SMITH,

Respondent.

**ORDER DENYING PETITIONER'S
MOTION TO STRIKE AS MOOT**

This is a habeas case under 28 U.S.C. § 2254. Petitioner Carl Neal (Petitioner) is incarcerated pursuant to a state court conviction, following a jury trial, for two counts of second-degree murder, and one count of first-degree criminal sexual conduct. Petitioner has filed a *pro se* petition for writ of habeas corpus challenging this conviction. Before the Court is Petitioner's motion "To Strike Respondent's Objection." For the reasons that follow, the motion will be denied as moot.

Petitioner claims that Respondent's answer to the habeas petition should be stricken because he did not receive a copy of the pleading. Respondent timely filed its answer with the Court, and attached to it was a proof of service indicating that Petitioner had been served at Ionia Maximum Correctional Facility in Ionia, Michigan. [Dkt. #6]. However, Ionia Maximum Correctional Facility was Petitioner's previous address.¹ Respondent

¹Respondent served Petitioner with the responsive pleading on June 29, 2009. The Court received a notice regarding Petitioner's change of address approximately three weeks later on July 22, 2009. [Dkt. #7].

subsequently corrected its service error by filing a new certificate of service with the Court and re-served Petitioner at the proper address, Straits Correctional Facility in Kincheloe, Michigan.² [Dkt. #9]. It is apparent that Petitioner has received Respondent's answer to the habeas petition because Petitioner has filed a reply brief to Respondent's answer, which consists of direct references to the contents of the responsive pleading.

Since the basis for Petitioner's motion to strike is a justifiable error due to the close proximity between when Petitioner was transferred to Straits Correctional Facility and when the answer was served, the Court does not find that Respondent acted improperly when it originally served Petitioner. Moreover, since Respondent filed its answer in a timely manner, and Petitioner has had the opportunity to review and respond to Respondent's answer, Petitioner has not suffered any prejudice. Therefore, striking Respondent's answer is not warranted.

Accordingly,

IT IS ORDERED that Petitioner's motion "To Strike Respondent's Objection" [Dkt. # 8] is **DENIED AS MOOT**.

s/Victoria A. Roberts
Victoria A. Roberts
United States District Judge

Dated: October 19, 2009

²Petitioner has since moved from Straits Correctional Facility to where he is presently confined, Marquette Branch Prison in Marquette, Michigan.

The undersigned certifies that a copy of this document was served on the attorneys of record and Carl Neal by electronic means or U.S. Mail on October 19, 2009.

s/Linda Vertriest _____
Deputy Clerk